

MINUTES OF THE
SPECIAL MEETING OF THE
STRUCTURAL PEST CONTROL BOARD
JULY 18, 2008

The meeting was held on Friday, July 18, 2008, at the Structural Pest Control Board, 2005 Evergreen Street, Sacramento, California, commencing at 8:06 AM with the following members constituting a quorum:

Mustapha Sesay, President
Cliff Utley, Vice President
Luis Agurto
Cris Arzate
Jean Melton
Bill Morris

Board member Terrel Combs-Feirrer was not present.

Board staff present:

Kelli Okuma, Executive Officer
Susan Saylor, Assistant Executive Officer
Ryan Vaughn, Administration Analyst

Departmental staff present:

Kurt Heppler, Legal Counsel

Board Liaison Deputy Attorney General Christina Thomas was also in attendance.

I. ROLL CALL

Ms. Saylor read the roll call.

II. REINSTATEMENT HEARING

The Board sat with Administrative Law Judge Karl S. Engeman and Deputy Attorney General Christina Thomas to hear the Petition for Reinstatement of Jeff A. Peters Jr., Field Representative's License No. FR 34689 and Michelle A. Stephenson, Operator's License No. 9178. The petitioners were informed that they would be notified by mail of the Board's decision.

III. FLAG SALUTE

Ms. Melton led everyone in the flag salute.

IV. EXECUTIVE OFFICER'S REPORT

Ms. Okuma reported on the following:

- Kathleen Smallwood, a longtime employee of the Board, passed away. She came to the Board through the American Association of Retired Persons (AARP) and had recently been hired as a permanent civil servant. Ms. Okuma stated that the Board was sad but very grateful for Ms. Smallwood's time with the Board.
- Cliff Smith, Department of Pesticide Regulations (DPR), was introduced as the new DPR liaison to the Board, replacing Kathy Boyle.
- Assembly Bill 1025 – This bill has been enrolled to the governor. It will provide that a person may not be denied licensure based solely on a criminal conviction if that person has been rehabilitated. The bill would also prevent a license from being suspended or revoked based on a criminal conviction that has been dismissed on specified grounds. The bill would also require that an applicant who has been denied or a licensee who has been revoked would receive a copy of the criminal history. It would also require that the Board provide certain information and provide that in a report if requested by the Department of Justice or the Federal Bureau of Investigations.

Mr. Heppler reported that the governor had vetoed Assembly Bill 1025.

- Assembly Bill 1925 – This bill would provide that the license of a person who has failed to pay an unpaid tax by a certain day shall be automatically suspended and require that the Franchise Tax Board mail a notice of suspension to the applicable licensing agency and to the licensee. The suspension would be cancelled upon compliance of the tax obligation. The bill is currently at the Senate Revenue and Taxation Committee.
- Assembly Bill 2223 – This bill would add San Diego county to the existing structural fumigation enforcement program that currently includes Los Angeles, Orange, and Santa Clara counties. The bill is currently at the Senate Appropriations Committee.
- Assembly Bill 2423 – This bill would give the Board the authority to issue probationary licenses. It would also require an applicant with a dismissed conviction provide proof of the dismissal to the Board. Boards would be required to develop standard terms of probation. The bill has been recently amended but the amendments are not specific to the Board. The bill is currently at the Senate Appropriations Committee.
- Senate Bill 963 – This bill reconstitutes a sunsetted Board under the Department of Consumer Affairs (DCA) rather than replacing it with a Bureau under DCA. The bill makes other changes in operations of Boards and oversight by DCA. This bill is now on the Senate Appropriations Suspense File.

- Senate Bill 1206 – This bill was approved by the Governor on June 30, 2008. This bill allows branch 2 and/or 3 companies to advertise for fumigation or any all-encompassing treatment if the company complies with specified requirements
- Assembly Bill 977 – This bill would delete the provisions of existing law that provides that no ordinance or regulation of local government can prohibit or in any way attempt to regulate any matter relating to the registration, sale, transportation, or use of pesticides. It would also delete the provisions of existing law that requires DPR to notify a promulgation entity if the Director determines that an ordinance or regulation is preempted by state law. Technical assistance will also be provided to any state agency to disseminate information on the use of pesticide products. Included in the Board package is a letter of opposition from the Pest Control Operators of California (PCOC).

Mr. Morris asked if there has been opposition from the industry to any of the bills discussed.

Martyn Hopper, PCOC, reported that PCOC has taken a position of opposition to Assembly Bill 977. He added that they are in support of Senate Bill 1206. Mr. Hopper added that Assembly Bill 2223 is out of the Senate Appropriations Committee and is going straight to the floor.

- Complaint survey results were reviewed with the Board members. Ms. Okuma reported that the low number of responses was due to the Board's recent move and the inability to have the survey cards printed until the Board had physically moved.
- Personal information of all employees in DCA was essentially leaked. Information has been provided to the Board members regarding credit protection and protection from identity theft.
- She was interviewed on Fight Back with David Horowitz. Listeners of the show called and made inquiries about termite treatments. The discussion led to the topic of orange oil. She was given an invitation return at a later date to further discuss various treatment methods.
- Recruitment has begun for a Staff Services Manager position to oversee the Board's enforcement unit.
- The Office of Administrative Law (OAL) has approved section 1984, which defines integrated pest management. The regulation amendments to require pre- and post-licensing integrated pest management education are currently going through the approval process. The Board will send out a mass-mail notification once all the integrated pest management regulations have been approved.

Mr. Heppler reported that the rulemaking file that contains the proposed amendments to section 1999.5 is currently at DCA.

- The Board amended regulations that included changes to the fumigation log, occupant's fumigation notice, and the notice of re-entry did not include an effective date in the language. As a result, there has been great concern from the industry that they need to immediately be in compliance. The Board is working on a

notification which will postpone the effective date, but the Board must wait for the budget to be approved before the notice can be sent.

- Board staffs Patti Jensen, Melissa Roberts, Karen Costley, Elizabeth James, Janene Claytor, Jamie Jones, and Vanessa Martinez were introduced in the audience.

Ms. Saylor reported on the following:

- Licensing statistics, survey results, and the Regulatory Action Status were reviewed with the Board members.

Mr. Morris cited that the licensing statistics have decreased significantly since the previous year. He asked if the Board should be concerned with the decreased numbers.

Ms. Saylor responded that the current economic state has affected the industry.

Mr. Morris asked if the Board should be concerned with the increased examination passing rates.

Ms. Saylor responded that the new branch 3 examinations might be a reason but it is more likely that the individuals who are coming into the industry are better educated.

- Workshops for the new branch 1 field representative and operator examinations have begun. The new exams should be developed by the end of 2008.
- A new newsletter was published at the end of June.
- Monica Figueroa has retired from the Board. Recruitment has begun to fill her vacancy.
- Carolyn Albers has retired from the Board's administration unit.
- Vanessa Martinez moved from the enforcement unit to the licensing unit as the new examination coordinator.
- Ila Kopp will be returning to the Board in the enforcement unit.
- Viki Whitaker, formerly of the licensing unit, has accepted a promotion to assume the duties of reviewing criminal offender reports.
- Research progress reports were reviewed with the Board members. Ms. Okuma reported that the Board has invited the researchers to present updates at the next Board meeting scheduled for November.

Vernard Lewis, University of California Berkeley, reported that he will be attending the November Board meeting. He stated that he would likely need an extension for one of his research projects.

Ms. Okuma suggested that he speak with Ms. Costley.

Mr. Arzate asked if the recent staff changes have affected the Board.

Ms. Okuma responded that this time of year is generally slower and that existing Board staff will be able to absorb the duties temporarily.

Mr. Utley asked about the decrease in the WDO filings with the board.

Ms. Saylor estimated that the number of filings is down about forty percent compared to last year.

Ms. Okuma added that the Board's specialists have started to target the companies that have not been filing their WDO reports.

V. APPROVAL OF MINUTES OF THE APRIL 17 AND 18, 2008, BOARD MEETING

Mr. Arzate moved and Mr. Morris seconded to approve the minutes of the special meeting of April 17 and 18, 2008. Passed unanimously.

VI. DEPARTMENT OF PESTICIDE REGULATION UPDATE

Cliff Smith, Department of Pesticide Regulation, reported on the following:

- The annual structural pest control training was conducted in both northern and southern California. There were more than 200 attendees. He wished to thank Board staff for their assistance.
- Statistics on the number and type of violations for the past year were shared with the Board members. DPR now has the ability to track the violations and can provide detailed information. The most common violation was the lack or misuse of personal protective equipment.

Mr. Utley asked what violation would fall into the "other" category.

Mr. Smith responded that he could provide more detailed information about the "other" category in the future.

Mr. Patzer stated that violations that would fall into the "other" category would be the failure to file monthly pesticide use reports, failure to notify the counties on an annual basis, and other paperwork violations.

Ms. Okuma stated that industry input in the annual training was very beneficial to the county agricultural commissioners.

VII. REVIEW OF THE REQUEST FOR INTERPRETATION OF THE BUSINESS AND PROFESSIONS CODE TO ALLOW A BRANCH 2 FIELD REPRESENTATIVE TO TREAT IN BRANCH 3, AND TO ALLOW A BRANCH 3 FIELD REPRESENTATIVE TO TREAT IN BRANCH 2; DISCUSSION OF THE TYPES OF LICENSES ISSUED BY THE BOARD

Ms. Okuma reported that at the January Board meeting John Van Hooser, Van Hooser Enterprises Inc., requested an interpretation of the Board's Business and Professions Code

to determine if a branch 2 field representative could treat in branch 3 and if a branch 3 field representative could treat in branch 2. The Board voted to direct legal counsel to examine the request and report at the April meeting. At the April meeting, Mr. Van Hooser stated that he was satisfied with the determination. Joe Gatto, Clark Pest Control, stated that he saw a conflict in that he believed that an individual with both an applicator and a field representative license would have to renew on two different dates. Ms. Okuma responded that any applicator licensee can request that their license renewal date match that of their field representative. Mr. Morris requested that a breakdown of the Board's licenses be prepared and presented to the Board at the next meeting. Ms. Okuma prepared a detailed table consisting of the pre-license requirements, scope of the license, and the renewal cycle for each license type.

Mr. Heppler stated that his opinion remains that branch 2 does not equal branch 3.

Ms. Okuma wished to direct the Board to the fact that a field representative does not need to hold an applicator license before being licensed as a field representative.

Mr. Morris stated that he is in agreement with Mr. Heppler's legal conclusions.

Mr. Heppler stated that the agenda item was just up for discussion and that no motion was required.

VIII. APPROVAL OF APPOINTMENT TO THE DISCIPLINARY REVIEW COMMITTEE

Ms. Okuma reported that the law provides if the county agricultural commissioner assesses a notice of proposed action to a Board licensee, that the licensee is entitled to an appeal process. The proposed action can be appealed to the Disciplinary Review Committee. The Disciplinary Review Committee is comprised of a representative from DPR, the Board, and the industry. There needs to be a pool of industry members to be available to serve on the committee. The two representatives before the Board were responsive to the Board's request and their resumes and license histories were provided to the Board for their consideration.

Mr. Morris asked if there are two vacant spots.

Ms. Okuma responded that there are only two individuals in the pool currently and the Board has historically had as many as two dozen members available.

Ms. Melton moved and Mr. Arzate seconded to recommend to DPR that Bruce Poole be appointed to the Disciplinary Review Committee.

Passed unanimously.

Mr. Utley moved and Ms. Melton seconded to recommend to DPR that John Tengan be appointed to the Disciplinary Review Committee.

Passed unanimously

IX. SUMMARY OF ALL ACTIONS TAKEN BY THE STRUCTURAL PEST CONTROL BOARD AT THIS MEETING

Ms. Okuma reported that this new agenda item is meant to provide a summary of all actions taken by the Board.

- The minutes of the April 17 and 18 meeting were approved.
- Bruce Poole was recommended to DPR for appointment to the Disciplinary Review Committee.
- John Tengan was recommended to DPR for appointment to the Disciplinary Review Committee.

X. BOARD MEETING CALENDAR

The next Board meeting will be held November 18, 2008, in Los Angeles. The following meeting will be held January 22 and 23, 2009, in either Napa or Santa Rosa.

XI. FUTURE AGENDA ITEMS

Mr. Van Hooser reported that Board specialists have been citing operators for punching test holes in stucco at the time of inspection. He stated that he has been told that a report has to be issued before the test holes can be punched. Mr. Van Hooser questioned whether punching test holes should be considered part of the inspection or if it is considered work. He added that he felt that punching holes should be considered an inspection as long as there is no additional charge to the consumer. He suggested that the Board consider defining inspection and work.

Mr. Utley asked Mr. Van Hooser if he was requesting that the Board possibly define inspection and work through a regulation.

Mr. Van Hooser responded that he was not requesting a regulation but rather a clarification at a future meeting that would then appear in the Board minutes.

Ken Moore, Ken Moore Termite Control, stated that he has been in the industry for 46 years and test holes have been part of his inspections. He added that if no one is present to authorize the test holes, he writes a recommendation for further inspection in his report.

Jim Brown, D & M Termite Company, stated that realtors want complete inspections and not recommendations for further inspections.

Mr. Heppler commented that the discussion was turning into a policy debate and that the topic could be considered at the next meeting.

Ms. Okuma stated that Mr. Van Hooser's request will be on the agenda for the November Board meeting.

Mr. Azarte requested that a statement of issue be prepared for the Board on the topic.

Mr. Brown stated that he had already drafted one and gave it to Ms. Okuma.

XII. PUBLIC COMMENTS FOR ITEMS NOT ON THE AGENDA

Mr. Morris asked Mr. Hopper for his take on the current economic status of the industry.

Mr. Hopper responded that the industry is bleak and there is no indication of when it might improve.

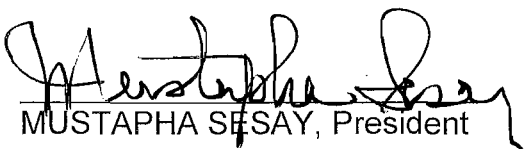
Mr. Morris asked Mr. Hopper to comment on the current quality of the industry.

Mr. Hopper responded that the quality of the industry has improved with the economic struggles citing increased competition as the main reason.

XIII. CLOSED SESSION

The Board adjourned to closed session to consider proposed disciplinary actions in accordance with subdivision (c)(3) of Section 11126 of the Government Code.

Mr. Sesay adjourned the meeting at 12:45 PM.


MUSTAPHA SESAY, President


KELLI OKUMA, Executive Officer

11-18-08
DATE